

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**May 1, 2006**

**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: December 9, 2005

Case Number: TSO-0325

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be granted.

**I. Background**

The individual is employed by a DOE contractor. The contractor requested access authorization for the individual, but documents submitted by the individual and an investigation of her background revealed information regarding past alcohol use that created a security concern. In order to resolve that concern, DOE conducted a Personnel Security Interview (PSI) with the individual in April 2004. In August 2004, a DOE consultant-psychiatrist evaluated the individual and opined that the individual suffers from alcohol abuse without adequate evidence of rehabilitation or reformation.

In October 2005, DOE informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding her eligibility for access authorization. Notification Letter (October 21, 2005). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (j) (Criterion J). The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8 (j). In this regard, the Notification Letter cites the opinion of the DOE consultant-psychiatrist that the individual suffers from alcohol abuse.

In a letter to DOE Personnel Security, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on

her own behalf and was represented by counsel. The transcript taken at the hearing shall be hereinafter cited as "Tr." Documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex."

## **II. Analysis**

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be granted because I conclude that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

### **A. Findings of Fact**

At age 16 the individual began drinking alcohol, and regularly drank two beers per week. In June 1993, at the age of 19, the individual and her mother got into a fight after leaving a bar. The individual called the police, who arrived at the scene and arrested the individual for Driving under the Influence (DUI). Her blood alcohol content was measured at .099, over the legal limit of .08. The individual's mother also obtained a protective order against the individual barring contact between the two women for three years. In November 1995, the individual got into a fight with a woman outside of a restaurant where she was working. The woman filed a complaint and the individual was charged with assault. The charge was later dismissed. In 1995 her ex-husband accused the individual of hitting him, and he obtained a domestic violence order against the individual. In July 1998, the individual and

her then boyfriend got into a fight after they had been drinking. She was charged with assault. That charge was also dismissed.

The individual began working for a DOE contractor in April 2002. PSI at 2. At the time, she was drinking five or six beers per weekend. Tr. at 61-62. In May 2003, the individual attended an afternoon event where she drank several mixed drinks in about five hours. Later that day, she drove a friend to get some beer. On the way home, she had an accident, her car went airborne and then flipped over several times. She and her passenger were taken to the hospital. PSI at 10. The individual was charged with DUI and was hospitalized for one week.

In July 2003 the individual completed a Questionnaire for National Security Positions (QNSP) as part of the application process for a security clearance. PSI at 2. The DOE conducted a PSI in April 2004 with the individual to clarify the circumstances of the criminal charges that the individual disclosed in her QNSP. During the PSI, she agreed to undergo a DOE psychiatric evaluation. *Id.* at 26.

A DOE consultant-psychiatrist (“psychiatrist”) evaluated the individual in August 2004. DOE Ex. 7 (Report). The psychiatrist sent the individual for psychological testing and then conducted a clinical interview. He concluded that the individual was defensive, in denial and lacked insight into her own motivations. He described her insight into her problems with alcohol use and anger control as “minimal if existent at all.” Report at 4. The psychiatrist diagnosed the individual with a long history of alcohol abuse as evidenced by multiple arrests for various alcohol-related crimes. He also found inadequate evidence of rehabilitation or reformation, and concluded that she required alcohol treatment.

## **B. DOE's Security Concerns**

The excessive use of alcohol raises a security concern because of its intoxicating effect. “Because the use of alcohol at the very least has the potential to impair a user’s judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases.” *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, a DOE psychiatrist opined that the individual suffers from alcohol abuse. Therefore, DOE’s security concerns are valid and the agency has properly invoked Criterion J in this case.

## **C. Hearing Testimony**

### **1. The DOE Psychiatrist**

The DOE psychiatrist testified that he had reviewed the individual’s file in preparation for her interview, sent the individual for a psychological test and then interviewed her personally in August 2004. Tr. at 13. He used the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR* (DSM IV) to arrive at a diagnosis of

alcohol abuse and mixed personality disorder. *Id.* at 13-14. He explained at the hearing that alcohol abuse is a “maladaptive pattern of alcohol use that infringes on a person’s ability to function.” *Id.* at 12. At the time of the interview, the psychiatrist found no evidence of rehabilitation or reformation. He noted that in the PSI the individual stated that she continued to use alcohol despite her DUIs and significant medical complications (i.e., stomach pains when she drank). *Id.* at 16. According to the psychiatrist, that was an example of maladaptive behavior. *Id.* Even though the fighting and alcohol incidents occurred when the individual was relatively young, the psychiatrist explained that DSM-IV criteria did not permit mitigation based on the individual’s youth and immaturity at the time of her incidents. The psychiatrist found it difficult to determine the individual’s true pattern of alcohol use because of inconsistencies during the clinical and the security interviews. He did not consider the individual very credible at the time that he interviewed her.

In response to questions about rehabilitation, the psychiatrist testified that there is a range of requirements for rehabilitation or reformation from alcohol abuse. Tr. at 16. “Specifically, it can range anywhere between the requirement of complete abstinence over a period of time to a pattern of ... non-maladaptive use of alcohol that would be within the context of what most people would consider normal use. . . .” *Id.* He explained that although there was no specific time requirement, typically a year or more of appropriate use of alcohol would be considered rehabilitation from alcohol abuse. *Id.* at 17. The psychiatrist described reformation as a change in behavior that ends the maladaptive behavior that the individual previously exhibited. For instance, if an individual is in a situation that has resulted in maladaptive behavior in the past, but then changes her response to that same situation repeatedly over time and exhibits normal behavior, that person has demonstrated reformation. Tr. at 24-25. As regards the individual, he stated that “continued abstinence for one year would be considered rehabilitation and reformation.” *Id.* at 29.

## **2. The Individual**

At the hearing, the individual first discussed her criminal history. Her testimony is similar to the version that she gave in the PSI. She described her past alcohol use as excessive drinking on weekends in bars with friends who also drank heavily. Tr. at 48. After her mother died in 2001 she was depressed and drank even more heavily for one year. The contractor hired her in 2002, and she has enjoyed her job. She described it as “the best job I have ever had.” *Id.* at 46. She reduced her consumption to five to six beers per weekend on most weekends. *Id.* at 61-62. However, after the very serious car wreck and DUI charge in 2003, she felt that she got another chance in life. *Id.* at 46. Consequently, the individual chose to change her life for the better. She committed to avoid the drinking and bar lifestyle and spent her free time with her family. At that time, she stopped going out with her old friends and instead visited her brother, who is a state trooper and does not drink alcohol.<sup>1</sup> In addition, she was so shaken by the implications of the interview with the DOE psychiatrist in August 2004 that she decided to stop drinking and improve her life. *Id.* at 57. She testified that she last consumed alcohol in the summer of 2004, approximately

---

<sup>1</sup> I asked the individual if there was any reason that none of her family members testified on her behalf. She stated that “I could have done that, yes. I didn’t know.” Tr. at 64. I note that the individual was represented by counsel.

18 months prior to the hearing. *Id.* at 56-57, 63. By the end of that year, she had stopped socializing altogether with her old drinking companions. *Id.* at 48.

In January 2005, the individual discovered that she was pregnant, and she gave birth to twins prematurely in August 2005. Tr. at 50. One of the twins was born with the left ventricle of her heart closed, and has required specialized medical care ever since. The child had one major heart operation shortly before the hearing, and her second was scheduled to occur within the month following the hearing. In addition, the baby requires a strict regimen of 14 medications daily, each administered at a certain time. The individual stated that she takes her responsibility for the child's life very seriously, and therefore no longer consumes alcohol. In November 2005 the individual married the children's father, and her new husband does not drink alcohol. *Id.* at 64.

Every weekend from the birth of her children until January 2006, the individual took the sick infant to a specialized children's hospital located several hours away, while her brother cared for the other twin. She and her husband spent weekends at the hospital with the child. She testified at length about the enormous responsibilities she now faces daily in caring for her sick child and working a full-time job. Tr. at 49-53. She rises at 3:00 a.m., makes bottles for the children, and is in her office by 5:45 a.m. At 4:30 p.m. she comes home, assumes responsibility for the children, and cooks. She also attends business classes at the local community college on three nights a week. The baby has an intravenous feeding tube and a heart monitor. If the child were to receive the wrong dosage of any of her medicines, she could die.

The individual stressed that she enjoys and respects her job, and with her child's life in her hands, she would not drink alcohol again. She testified at the hearing that her life is happier without alcohol and that "I have too much responsibility that there is no way ever I would even touch alcohol again. I mean, that's a decision that I have made." Tr. at 53.

#### **D. Evidence of Rehabilitation and Reformation**

After listening to the individual's testimony, the psychiatrist agreed that the individual has changed her behavior. He testified that she has been placed in situations where maladaptive behavior could have occurred, but she has decided to instead behave in a different manner than the past. Tr. at 67-68. He concluded that her current behavior marked the beginning of the process of rehabilitation or reformation, and that she has apparently sustained a change in her behavior over a period of time. *Id.*

At the hearing, the individual testified very credibly about her 18 months of abstinence, and the changes in her life as a result of her car wreck, her interview with the DOE psychiatrist, and most importantly, the birth of her twins. She was very honest and admitted that she had an alcohol problem. She stated at the hearing "I just knew I drank too much." Tr. at 63. Her pride in her children was evident and she stated that she was willing to do anything to keep her daughter alive and well. She called the changes in her life "amazing" after she removed herself from her social circle of heavy drinkers. Tr. at 58. I agree with the DOE psychiatrist that the individual has reformed her behavior. Continued abuse of alcohol or lack of diligence in her role as caretaker would have manifested by now as a

medical emergency for her sickly child. Instead, the child continues to improve under the care of her mother. The individual has changed her behavior, beginning in 2004 – spending free time with her family and shunning her old drinking companions. After her children were born in August 2005, her daily routine as described is so busy that it tends to corroborate her testimony that she no longer goes to bars or drinks with friends on the weekends.

In a Part 710 proceeding, the hearing officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, the psychiatrist listened to the individual's testimony at the hearing, observed her demeanor and concluded that the individual has indeed begun the process of rehabilitation or reformation. The psychiatrist has changed his view of her credibility. During the evaluation in August 2004, both the psychiatrist and the psychologist who tested the individual found her to be very guarded and defensive. Report at 1-3, 7-8. She denied any problems with alcohol until confronted with the specifics of her record. However, by the time of the hearing their concern was mitigated by the individual's acknowledgment of her alcohol problem and by the positive steps she has taken to change her behavior. At the hearing, the individual testified credibly about the changes in her life and the new responsibilities she faces as the mother of a child with a birth defect.

I was persuaded by the testimony of the psychiatrist and the individual herself, and I conclude that the individual has mitigated the security concerns arising from the diagnosis of alcohol abuse. I base this conclusion on the following factors: (1) the favorable prognosis of the psychiatrist; (2), the individual's 18 months of abstinence from alcohol; (3) the changes in the individual's behavior (i.e., spending her free time with her family and not her old drinking companions), and (4) her embrace of an alcohol-free life that is centered on providing for her children. Thus, I find that the individual has mitigated the security concerns arising from the diagnosis of alcohol abuse by acknowledging her alcohol problem, providing evidence of actions to overcome her alcohol abuse, and establishing a pattern of sustained abstinence. See Guideline G, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (December 29, 2005).

## **II. Conclusion**

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (j). However, the individual has presented adequate mitigating factors for this criterion that alleviates the legitimate security concerns of the DOE Operations Office. In view of this criterion and the record before me, I find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I conclude that the individual should be

granted access authorization. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: May 1, 2006